

(2009) 07 BOM CK 0220

In the Bombay High Court

Case No : Criminal Writ Petition No. 1216 of 1999

Sunita Sunil Pandav

APPELLANT

Vs

Sunil Rajaram Pandav and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437
Penal Code, 1860 (IPC) — Section 494

Citation : (2009) 07 BOM CK 0220

Hon'ble Judges : S.A. Bobde, J

Bench : Single Bench

Advocate : Shyam Walwe, instructed by D.K. Ghaisas, for the Appellant; Nitin Deshpande, for Respondent Nos. 1 and 4 to 13 and M.H. Mhatre, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Bobde, J.—The Petitioner has challenged the Order of the Additional Sessions Judge, Pune, dated 26th March, 1999, in Revision upholding the Order of the trial Court discharging the respondents ? accused in pursuance of the Judgment of the Supreme Court in Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, decided on 1st May 1996. The Respondent ? accused No. 1 was facing a prosecution for bigamy u/s 494 of the Indian Penal Code, which is a matrimonial offence. On 1st May 1996 the Supreme Court decided a case of "Common Cause" a Registered Society v. Union of India in which vide a paragraph 41.(b), Supreme Court observed as follows:

Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal

bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 CrPC.

Since the case of the accused was covered by the aforesaid direction, the trial Court on 31st August 1996 directed that the accused be discharged. This Order was upheld by the Revisional Court on 26th March 1999 having regard to the Judgment of the Supreme Court. That Order is impugned in this Writ Petition.

2. The learned Counsel for the Petitioner pointed out that the Judgment of the Supreme Court was later on clarified by another Order in the same case i.e. Common Cause, A Registered Society Vs. Union of India (UOI) and Others, decided on 28th November 1996, where the Supreme Court added matrimonial offences to the offences from which the accused would not get a discharge. According to the learned Counsel for the Petitioner, the Revisional Court ought not to have upheld the order or discharge since on the date of the Order of the Revision Court the accused were not entitled to discharge.

3. The learned Counsel for the Respondents submitted that in the clarificatory Judgment of the Supreme Court i.e., Common Cause, the Supreme Court has made a specific observation which reads as follows:

It is further directed that in criminal cases pertaining to offences mentioned under the above additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant to our judgment dated 1-5-1996 and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the criminal court concerned shall suo motu or on application by the aggrieved parties concerned shall issue within three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law.

It is therefore submitted on behalf of the Respondents that an accused who is discharged in pursuance of the earlier order, does not automatically become subject to prosecution again because of the clarificatory order reported in Common Cause, A Registered Society Vs. Union of India (UOI) and Others, .

4. Having considered the rival submissions, I am of view that the submission on behalf of the Respondents deserves to be upheld. It is true that the Respondents would not have been entitled to the benefit of the discharge in the first judgment in Common Cause had they been discharged after the clarificatory judgment. However, in this case the Respondents were discharged on 31st August 1996 i.e. within a few months of the Judgment by the Supreme Court. Once that was done what remains to be seen is whether the discharge was set aside and if so, when. On a plain reading of the clarificatory order, the Supreme Court has provided a specific procedure for restoration of the criminal cases against such person who were accused of an offence in respect of which the first judgment in "Common Cause" would not apply. The procedure prescribed for restoration of criminal

cases against such accused who have been discharged is that the concerned criminal court may on its own or on an application by the aggrieved parties issue summons or warrants to such discharged or acquitted accused for being prosecuted further in accordance with law. This procedure was introduced by Their Lordships apparently being mindful of the fact that the accused who has been discharged by a competent court of law would have to undergo prosecution again without there being any prejudicial act on his part. In the present case, this step of issuing summons or warrants to the accused for restoring the prosecution has not been taken at any time either by the Court suo motu or by the petitioner or any other party. In this view of the matter and having regard to the interest of justice there is no reason to interfere with the impugned order. The petition is therefore dismissed.

5. Rule disposed of.